



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: AT&T Corporation

File: B-270344; B-270344.2

Date: February 28, 1996

Pamela G. Sauber, Esq., and Steven W. DeGeorge, Esq., for the protester.
Anthony L. Cogswell, Esq., for Sprint Communications Company, L.P., an intervenor.
H. Jack Shearer, Esq., and Clifton M. Hasegawa, Esq., Defense Information Systems Agency, for the agency.

Katherine I. Riback, Esq., and Glenn G. Wolcott, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging that agency improperly terminated protester's contract is not for consideration as it concerns a matter of contract administration not within General Accounting Office bid protest function.
2. Protest against the sole-source award of a contract for telecommunications circuit is denied where the contracting agency reasonably determined that only the proposed awardee was capable of meeting the agency's urgent delivery requirement.

DECISION

AT&T Corporation protests the Defense Information Systems Agency, Defense Information Technology Contracting Office's (DITCO) termination for convenience of the firm's contract, for a point-to-point private line telecommunications circuit for an estimated 24-month period, and the agency's determination to reprocur this requirement under contract with Sprint Communications Company, L.P. AT&T argues that DITCO's actions improperly deprived it of an opportunity to furnish the circuit, and constituted an unjustified sole-source procurement from Sprint.

We deny the protest.

BACKGROUND

On September 7, 1995, DITCO received a telecommunications service order for a point-to-point telecommunications circuit between Fort McPherson, Georgia, and Fort Hood, Texas. The service order required that service be established by October 16 and specified that the "service date is critical." The circuit was to support an Advanced Research Projects Agency (ARPA) exercise involving more than 200 personnel at various locations throughout the country. DITCO was

informed that failure to meet the scheduled delivery date would adversely impact the agency's ability to provide telecommunications connectivity for "live" traffic to be transmitted for the nationwide exercise, and jeopardize other circuit installation schedules around the United States.

On September 14, the agency issued telecommunication service request (TSR) No. AO29AUG9500072/I on the DITCO Acquisition Bulletin Board to obtain competitive quotations for the circuit.¹ The TSR identified a service date of "16 Oct 95," and stated that the "service date is critical." Quoters were advised that award would be made to the responsible firm whose quote was most advantageous to the government and that the agency intended to award the contract without holding discussions.

On September 26, DITCO received six quotes responding to the TSR. Sprint submitted the lowest quote, but stated that the service date would be "45 calendar days ARO [after receipt of order]." Based on this limitation, the agency determined that Sprint's quotation did not meet its requirements and did not further consider Sprint for award at that time. On September 28, DITCO issued a service order to AT&T, based on its submission of the second-low quotation.

On October 4, ARPA personnel expressed concern to DITCO that, due to a lack of facilities available to AT&T at Fort Hood, AT&T would be unable to provide the circuit by the required delivery date. DITCO immediately relayed this concern to AT&T and was assured by AT&T that the required delivery date would be met. The agency again discussed this matter with AT&T on October 5, October 10, and October 12; AT&T continued to assure the agency that it would meet the required service date.

On Friday, October 13, AT&T informed the agency that, contrary to its prior representations, it would be unable to meet the required October 16 service date due to its inability to obtain access to the necessary equipment and facilities at Fort Hood, Texas. The contracting officer immediately contacted Sprint which stated that it could provide the required circuit by the October 16 service date, specifically noting that it had access to facilities at Fort Hood which were not available to

¹A TSR contains information about a given procurement. Quoters respond to the TSR by providing quotes containing rates and any exceptions concerning their ability to provide the requested service.

AT&T.² Additionally, Sprint offered to provide the circuit at the same price it had submitted in its September 26 quotation.

Based on AT&T's acknowledged inability to meet the October 16 delivery date, DITCO terminated AT&T's contract. Then, pursuant to 10 U.S.C. § 2304 (c)(2) (1994) and Federal Acquisition Regulation (FAR) § 6.302-2(a) (2), the contracting officer determined that unusual and compelling urgency existed which required the use of other than full and open competition in order to procure the required circuit and, on October 13, placed a verbal order with Sprint. A written service order was subsequently issued.

Sprint did, in fact, install the circuit at Fort Hood by the required October 16 delivery date. However, due to problems with the local exchange carrier at Fort McPherson, Sprint was unable to install the circuit at that location until October 21.³ On that date, the complete circuit became operational.

DISCUSSION

AT&T first protests DITCO's termination of its contract on the basis of AT&T's acknowledged inability to meet the October 16 delivery date. AT&T complains that the termination was improper because Sprint also failed to meet the delivery date.

AT&T's challenge to the termination of its contract involves matters of contract administration beyond the scope of our bid protest function. Under the Competition in Contracting Act of 1984, our Office considers challenges to the award or proposed award of contracts. 31 U.S.C. § 3552 (1994). We do not generally review matters of contract administration, as they are within the discretion of the contracting agency and for review by a cognizant board of contract appeals or the Court of Federal Claims. See Bid Protest Regulations, Section 21.5 (a), 60 Fed. Reg. 40,737, 40,742 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.5(a)); Specialty Plastics Prods., Inc., B-237545, Feb. 26, 1990, 90-1 CPD ¶ 228. While we do so where it is alleged that a contract modification improperly exceeds the scope

²Sprint explains that when it submitted its September 26 quotation, it was unsure whether it would have access to facilities at Fort Hood, but subsequently determined that such facilities were available and would accommodate installation of the circuit there by October 16.

³Sprint states that it had earlier confirmed that Bell South had access into Fort McPherson. However, on October 16, Bell South reported that it did not have that capacity. On October 20, after further discussion, Bell South confirmed that the required capacity did exist into Fort McPherson, and the circuit was accepted by DITCO on October 21.

of the contract and therefore should have been the subject of a new procurement, CAD Language Sys., Inc., 68 Comp. Gen. 376 (1989), 89-1 CPD ¶ 364, or where an agency's basis for contract termination is that the contract was improperly awarded, Condotels, Inc. et al., B-225791; 225791.2, June 30, 1987, 87-1 CPD ¶ 644. Neither situation is present here where the termination is based on an awardee's express admission that it will be unable to perform its contractual obligations. Accordingly, AT&T's complaint regarding DITCO's termination of its contract is not for consideration by our Office.

AT&T next protests that DITCO's justification for the sole-source award to Sprint was not reasonably based. Under 10 U.S.C. § 2304(c)(2), an agency may use noncompetitive procedures to procure goods or services where the agency's needs are of such unusual and compelling urgency that the government would be seriously injured if the agency were not permitted to limit the number of sources from which it solicits bids or proposals. An agency using the urgency exception may limit competition to firms with satisfactory work experience which it reasonably believes can promptly and properly perform the work. See FAR § 6.302-2(a)(2); Jay Dee Militarywear, Inc., B-243437, July 31, 1991, 91-2 CPD ¶ 105. In these circumstances, the agency is not required to solicit an incumbent contractor if, in the agency's reasonable judgment, there is doubt, based on the incumbent's prior record, that the firm can perform acceptably. E. Huttenbauer & Son, Inc., B-252320.2; B-252320.3, June 29, 1993, 93-1 CPD ¶ 499. This is true whether or not the agency has formally found the incumbent to be nonresponsible under FAR § 9.103(b). Atlanta Investigations, B-227980; B-227981, July 30, 1987, 87-2 CPD ¶ 121. We will object to an agency's determination in this regard only when it lacks a reasonable basis. See AT&T Info. Servs., Inc., 66 Comp. Gen. 58 (1986), 86-2 CPD ¶ 447; Honeycomb Co. of Am., B-225685, June 8, 1987, 87-1 CPD ¶ 579. In this regard, a military agency's assertion that there is a critical need having an impact on military operations carries considerable weight. Jay Dee Militarywear, Inc., *supra*.

Here, the record shows that, based on the information reasonably available to the contracting officer at the time of award, the determination to award the contract to Sprint on a sole-source basis was adequately justified. As indicated above, the circuit being acquired was needed to provide telecommunication support for an exercise being conducted by ARPA in connection with the \$30 million Joint Precision Strike Demonstration (JPSD) program. The exercise involved more than 200 personnel at various locations involving war fighting capabilities. On Friday, October 13, the contracting officer was informed by AT&T that it would not be able to meet the October 16 service date due to local access problems at Fort Hood, Texas. Sprint then represented that it could meet the required delivery date because it had access to Fort Hood facilities not shared by AT&T.

The record contains no indication that either Sprint or the contracting officer knew, or should have known, that Sprint would, ultimately, be unsuccessful in meeting the

required delivery date. Although AT&T's protest suggests that the contracting officer should have anticipated the problems Sprint encountered at Fort McPherson, AT&T offers no support for this assertion. On the record here, we find no basis to question the good faith belief, at the time of award, of Sprint and the contracting officer that Sprint would be able to perform the contract as required. See Aviation Sys. and Mfg., Inc., B-250625.3, Feb. 18, 1993, 93-1 CPD ¶155.⁴

AT&T next asserts that the agency's award to Sprint was based on an offer that failed to comply with the agency's stated requirements. This assertion is based on the premise that DITCO's award to Sprint was based on Sprint's September 26 quotation—which indicated noncompliance with the required delivery date. Again, the record contradicts AT&T's assertion. On October 13, DITCO placed a verbal order with Sprint, based on Sprint's express representations that it would be able to meet the required delivery date. That verbal order was followed by a written order confirming Sprint's representations. Specifically, the written order stated: "Start service effective 16 Oct 95 per your quote dated 26 Sep 95 and verbal between [the contracting officer] and [Sprint personnel] on Friday, October 13, 1995." Thus, the record demonstrates that the contract awarded to Sprint on October 13 was based on Sprint's express offer to comply with the agency's stated requirements, including the October 16 service date.

Finally, AT&T protests that it was improper for the agency to subsequently "waive" the October 16 delivery date for Sprint by accepting an October 21 service date.⁵ This portion of AT&T's protest merely challenges the agency's decisions in administering Sprint's contract. As noted above, matters of contract administration

⁴In comments filed on December 22, AT&T, for the first time, asserts that the award to Sprint was improper because the length of the contract extended beyond the period of urgency. This issue is untimely. Under our Bid Protest Regulations, a protest not based on an apparent solicitation impropriety must be filed no later than 14-calendar days after the protester knew, or should have known of the basis of protest, whichever is earlier. Section 21.2(a) (2), 60 Fed. Reg. supra (to be codified at 4 C.F.R. § 21.2(a) (2)). Because this argument was first raised more than 14-calendar days after AT&T knew, or should have known, of the issue, it will not be considered. See Management Technology, Inc., B-257269.2, Nov. 8, 1994, 95-1 CPD ¶ 248.

⁵Sprint subsequently agreed to provide the agency with 10 days of service at no charge, in part as compensation for delay in installing the circuit.

are not for consideration under our bid protest function. See Jasper Painting Serv., Inc., B-251092, Mar. 4, 1993, 93-1 CPD ¶ 204.

The protest is denied.

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